

SENTENCING COMMISSION

MINUTES

Committee:	SENTENCING COMMISSION
-------------------	------------------------------

Date:	Wednesday, Oct. 9, 2002	Time:	12:00 PM	Place:	Matheson Courthouse Conference Rm A
--------------	-------------------------	--------------	----------	---------------	--

Members Present	Rep. Cindy Beshear, Paul Boyden, Blake Chard, K.S. Cornaby, Mary S. Corporon, Marlene Gonzalez, John Hill, G. Fred Metos, Joel Millard, Chris Mitchell, Judge David Mower, Brian Namba, Chief Ed Rhoades, Michael Sibbett, Sy Snarr, Rep. Mike Thompson, Kirk Torgenson, Russ Van Vleet
Members Excused	David Bateman, Judge Terry Christiansen, Dr. Judy Engen, Ed McConkie, Judge Gregory K. Orme, Judge Sterling Sainsbury, Sen. Terry R. Spencer, Sen. Alicia Suazo, Judge Robert S. Yeates
Staff	Ron Gordon, Mike Haddon, Jo Lynn Kruse

Visitors	Susan Allred, Mark Field, Steve Golding, Janetha Hancock, Creighton Horton, Fraser Nelson, John Watt, Mike Wims
-----------------	---

Agenda Item:	Welcome and Approval of Minutes
Notes:	Kay Cornaby called the meeting to order and welcomed new members Sy Snarr, Brian Namba and Chief Ed Rhoades. Mike Sibbett motioned to accept the September minutes. Kirk Torgenson seconded and it passed unanimously .

Agenda Item:	Review Report from the Atkins Subcommittee
Notes:	<p>Ron Gordon reviewed the Atkins Subcommittee report issue by issue. Last month the commission voted to form a subcommittee that could address some of the details of the draft legislation.</p> <p><u>Issue 1.</u> Definition of mental retardation for purposes of mental illness defense. Lines 51 – 53 removes the legislative delegation to the DSM.</p> <p><u>Issue 2.</u> Amendment to mitigating factors for capital felony sentencing. Lines 88 – 95 Mental Retardation in addition to mental illness can be a mitigating factor at sentencing. The Commission discussed whether the age by which mental retardation must be manifested should be changed or removed completely. Mike Sibbett motioned to amend the age on lines 53, 171 and 181 to age 22. Russ Van Vleet seconded the motion. The motion passed unanimously.</p> <p><u>Issue 3.</u> Automatic reversion to life in prison without parole if death sentence is overturned due to mental retardation. Dr. Golding explained that lines 48 and 90 are not consistent with current practice. Paul Boyden motioned to strike through Line 48 and 90. Mike Sibbett seconded and it passed unanimously.</p> <p><u>Issue 4.</u> Prohibition of imposition of death sentence on mentally retarded defendant.</p> <p><u>Issue 5.</u> Prohibition of death sentence if confession not supported by substantial evidence.</p> <p><u>Issue 6.</u> Definition of mentally retarded for purposes of death sentence exclusion.</p> <p><u>Issue 7.</u> Court may raise issue of mental retardation at any time.</p> <p><u>Issue 8.</u> Procedures for determining whether defendant is mentally retarded or has mental deficiencies.</p> <p><u>Issue 9.</u> Burden of proof and burden of persuasion. The Commission did not reach a consensus. Instead, the report will identify the positions of the defense lawyers and prosecutors. The Legislature can then use that information in establishing the burden of proof.</p> <p><u>Issue 10.</u> Issues of mental retardation and mental deficiencies for purposes of death penalty exclusion may not be submitted to the jury.</p> <p><u>Issue 11.</u> Defendant's willful failure to cooperate.</p>

	<p><u>Issue 12.</u>Limitations on admitting mental retardation examination evidence.</p> <p><u>Issue 13.</u>Interlocutory appeal by the state. Paul Boyden motioned to insert the words “when upon a petition for review the appellate court decides that the appeal would be in the interest of justice” to the end of line 350. John Hill seconded the motion and it passed unanimously.</p> <p>The Commission decided that the most beneficial action would be to approve the report and send it to the Legislature, but not take a position on the bill at this time. Rep. Cindy Beshear motioned to approve the report, Mary Corporon seconded. It passed unanimously.</p> <p>John Hill (for defenders) and Paul Boyden (for prosecutors) will submit additional information, clarifying the positions of defense lawyers and prosecutors on the burden of proof. This will be added to the report, but the report be clear that the Commission takes no position on the burden of proof issue.</p>
--	---

The next meeting is scheduled for Tuesday, November 5, 2002 at noon, Matheson Courthouse, Conference Room W 19A

Minutes prepared by Jo Lynn Kruse - Executive Secretary CCJJ